

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOHN M. WINSTON,

Plaintiff(s),

Case No. 2:22-CV-288 JCM (EJY)

## ORDER

V.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant(s).

Presently before the court is defendant State Farm Mutual Auto Insurance Company's ("State Farm") motion for summary judgment. (ECF No. 41). Plaintiff John Winston filed a response (ECF No. 42), to which defendant replied (ECF No. 43). For the reasons explained below, the court finds that Winston failed to comply with a condition precedent to bringing the instant legal action. The court therefore GRANTS the motion, in part, and dismisses the action without prejudice.

## I. Background

On August 5, 2019, Winston was involved in a three-car, rear-end motor vehicle incident caused by a drunk driver. (ECF No. 1). Winston reported his claim to State Farm and resolved the property damage to his vehicle. (*Id.*). Winston also hired an attorney and began pursuing a bodily injury claim under his policy's underinsured motorist ("UIM") coverage, which is the subject of this litigation. (*Id.*).

The parties attempted to resolve the bodily injury claim through intermittent communication between the end of 2019 and the beginning of 2022. (ECF No. 41, Ex. E). In November 2019, Winston's former attorney, Mr. Shimer, advised State Farm that Winston was

1 receiving treatment for injuries caused by the accident. (*Id.* at SFMAIC0140). Mr. Shimer  
 2 shared a similar update with State Farm in February 2020. (*Id.* at SFMAIC0138).

3 State Farm alleges it sent Winston a “UIM packet” in May 2020 containing an injury  
 4 questionnaire and medical authorization forms. (ECF No. 41, Ex. F ¶ 7). State Farm followed  
 5 up with Mr. Shimer in June, August, and October of 2020. (*Id.*, Ex. E at SFMAIC0136-7). Mr.  
 6 Shimer contacted State Farm in November 2020 with plaintiff’s medical records and a demand  
 7 letter for policy limits, claiming \$63,052,12 in medical treatment. (*Id.*, Ex. G). At that time,  
 8 Winston represented that he had residual back pain and would continue chiropractic care. (*Id.*).

9 In December 2020, State Farm sent Winston an offer for \$21,020 to settle his medical  
 10 damages. (*Id.*, Ex. E at SFMAIC0132). Winston retained Edward Achrem, who informed State  
 11 Farm in April 2021 that Winston may have surgery and thereafter sent a renewed demand in  
 12 August 2021 for policy limits and future medical specials of \$28,800. (*Id.*, at SFMAIC0124).  
 13 State Farm elected to pursue its own medical examination to determine the extent of Winston’s  
 14 injuries. (*Id.*). State Farm retained Jonathon Hansen as counsel to facilitate the exam. (*Id.*, Ex.  
 15 M).

16 In a series of letters, Mr. Achrem and Mr. Hansen attempted to reach an agreement about  
 17 the independent medical exam. (ECF No. 41, Exs. M, N, O, Q). State Farm issued a reservation  
 18 of rights letter on December 21, 2021, citing Winston’s “questionable” compliance. (*Id.*, Ex. P).  
 19 Mr. Achrem sent a final letter on January 3, 2022, advising State Farm that Winston would  
 20 submit to the exam “under extreme protest,” and would pursue litigation in the meantime. (*Id.*,  
 21 Ex. Q).

22 Winston filed this action in February 2022, alleging breach of contract, breach of the  
 23 covenant of good faith and fair dealing, violation of Nevada’s Unfair Trade Practices Act, and  
 24 insurance bad faith. State Farm now moves for summary judgment.

25 **II. Legal Standard**

26 Federal courts sitting in diversity apply the relevant state substantive law and federal  
 27 procedural law unless state law conflicts with a valid federal statute or procedural rule. *E.g.*,  
 28 *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003) (quoting *Erie R.R. v. Tompkins*,

1 304 U.S. 64, 78 (1938)); *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1282 (9th  
 2 Cir. 1999). The standards governing summary judgment are procedural, not substantive. *See*  
 3 *Cortez v. Skol*, 776 F.3d 1046, 1054 n.8 (9th Cir. 2015) (citing *Knievel v. ESPN*, 393 F.3d 1068,  
 4 1073 (9th Cir. 2005)).

5 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,  
 6 depositions, answers to interrogatories, and admissions on file, together with the affidavits (if  
 7 any), show that “there is no genuine dispute as to any material fact and the movant is entitled to  
 8 judgment as a matter of law.” FED. R. CIV. P. 56(a). Information may be considered at the  
 9 summary judgment stage if it would be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032,  
 10 1036 (9th Cir. 2003) (citing *Block v. Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001)). A  
 11 principal purpose of summary judgment is “to isolate and dispose of factually unsupported  
 12 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

13 In judging evidence at the summary judgment stage, the court does not make credibility  
 14 determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most  
 15 favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809  
 16 F.2d 626, 630–31 (9th Cir. 1987).

17 When the non-moving party bears the burden of proof at trial, the moving party can meet  
 18 its burden on summary judgment in two ways: (1) by presenting evidence to negate an essential  
 19 element of the non-moving party’s case; or (2) by demonstrating that the non-moving party  
 20 failed to make a showing sufficient to establish an element essential to that party’s case on which  
 21 that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the  
 22 moving party fails to meet its initial burden, summary judgment must be denied, and the court  
 23 need not consider the non-moving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.  
 24 144, 159–60 (1970).

25 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
 26 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
 27 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the  
 28 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient

1 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’  
 2 differing versions of the truth at trial.” *T.W. Elec. Serv., Inc.*, 809 F.2d at 630.

3 However, the nonmoving party cannot avoid summary judgment by relying solely on  
 4 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,  
 5 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of  
 6 the pleadings and set forth specific facts by producing competent evidence that shows a genuine  
 7 issue for trial. *See Celotex*, 477 U.S. at 324. If the nonmoving party’s evidence is merely  
 8 colorable or is not significantly probative, summary judgment may be granted. *Anderson v.*  
 9 *Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986).

10 **III. Discussion**

11 State Farm first argues summary judgment is appropriate because Winston did not  
 12 comply with a condition precedent to his insurance policy and is therefore precluded from  
 13 coverage and bringing legal action pursuant to the policy. In the alternative, State Farm argues  
 14 partial summary judgment is appropriate as a matter of law on several individual claims.

15 The court considers State Farm’s preclusion argument first and finds that Winston failed  
 16 to comply with the legal-action clause of his policy, barring him from filing suit. As explained  
 17 below, the court elects to dismiss the action in its entirety on this basis and thus declines to  
 18 consider State Farm’s remaining arguments.

19       **A. State Farm’s Legal-Action Clause**

20 Under Nevada law, an insurance policy is a contract that must be enforced according to  
 21 its terms, and an insured’s failure to comply with a condition may preclude coverage. *Valentine*  
 22 *v. State Farm Mut. Auto Ins. Co.*, 105 F.Supp.3d 1176, 1181 (D. Nev. 2015). When an insurance  
 23 policy unambiguously makes compliance with a term a condition precedent to coverage, the  
 24 insured has the burden of showing that he complied with that term. *Thompson v. Allstate*  
 25 *Insurance Company*, 431 F.Supp.3d 1163 (Nev. 2019).

26 State Farm argues Winston must submit to an Independent Medical Examination (“IME”)  
 27 as a condition precedent to coverage and has failed to do so. State Farm also contends Winston  
 28

1 initiated this lawsuit in violation of the policy's legal-action clause. The disputed provisions in  
 2 the policy are as follows:

3       “A person making a claim under (a) Medical Payments Coverage... must... (2) be  
 4 examined as reasonably often as [State Farm] may require by physicians chosen and paid  
 5 by [State Farm].” ECF No. 41, Ex. A State Farm Policy at SFMAIC0030.

6       “Legal action may not be brought against... [State Farm] until there has been full  
 7 compliance with all the provisions of this policy.” *Id.* at SFMAIC0033.

8       Courts in this district enforce medical exam requirements and legal-action clauses as  
 9 unambiguous conditions precedent to coverage. *Schwartz v. State Farm Mut. Auto Ins. Co.*,  
 10 2:07-cv-00060-KJD-LRL, 2009 WL 2197370 (D. Nev. July 23, 2009); *Goldman v. Vigilant*  
 11 *Insurance Company*, 632 F.Supp.3d 1188, 1195 (D. Nev. 2022) (finding an examination-under-  
 12 oath provision and legal-action clause unambiguous). Therefore, Winston carries the burden of  
 13 showing he complied with the policy terms.

14       Winston argues he agreed to participate in an IME pursuant to the January 3, 2022, letter  
 15 in which his attorney wrote that if State Farm is going to deny coverage, Winston “will submit to  
 16 the medical examination under extreme protest.” ECF No. 41, Q at 6. The letter then states that  
 17 Winston’s attorney will still pursue litigation to afford his client the protections of the Nevada  
 18 Rules of Civil Procedure for medical examinations. *Id.* This lawsuit was filed approximately  
 19 one month later.

20       The legal action clause in State Farm’s policy is a condition precedent—not to coverage,  
 21 but to filing a lawsuit. There is no genuine dispute that Winston did not submit to an IME prior  
 22 to filing the lawsuit. Indeed, Winston indicated his intent to comply with the IME request in the  
 23 January letter, but he nevertheless initiated legal action to forcibly “require the filing of a formal  
 24 motion if State Farm intends to pursue a medical examination.” *Id.* This practice is directly  
 25 violative of State Farm’s policy requiring full compliance with all terms before a lawsuit can be  
 26 filed. *See* ECF No. 41, Ex. A at SFMAIC0033.

27       Courts in this district routinely dispose of coverage-related actions based on similar legal-  
 28 action clauses. *See, e.g., Holland v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 1268712, at \*5  
 (D. Nev. Mar. 27, 2014) (holding that “[t]he fact that [the insured] initiated this lawsuit against

1 State Farm before complying with the cooperation provisions bars this lawsuit"); *Cuadros v.*  
 2 *State Farm Fire & Cas. Co.*, 2014 WL 7338945, at \*4 (D. Nev. Dec. 23, 2014) (dismissing  
 3 action because insured failed to comply with appraisal provision and "the policy's 'legal action  
 4 against us' provision bars suit until the parties have complied with all terms of the policy");  
 5 *Goldman*, 632 F.Supp.3d 1188 (dismissing an action on a motion for summary judgment for the  
 6 insured's failure to comply with legal-action clause).

7 Because the court finds that Winston was barred from bringing this action without first  
 8 complying with all other conditions of the policy, the appropriate remedy is dismissal of the  
 9 action rather than summary judgment. *See Gerke v. Travelers Cas. Ins. Co. of Am.*, 815 F. Supp.  
 10 2d 1190, 1203 (D. Or. 2011) (reasoning that the insured's failure to comply with an examination-  
 11 under-oath provision did "not bar his ability to bring suit to recover, but merely suspend[ed] his  
 12 ability to bring suit until he has fully complied with" the condition. The court therefore  
 13 dismisses the action without prejudice to Winston's ability to later refile.

14 **IV. Conclusion**

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant State Farm's  
 17 motion for summary judgment (ECF No. 41) be, and the same hereby is, GRANTED, in part:  
 18 this action is dismissed without prejudice based on the plaintiff's failure to comply with  
 19 conditions precedent to his bringing suit.

20 DATED May 2, 2025.

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UNITED STATES DISTRICT JUDGE

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